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THE PARADOX OF THE NORMATIVITY OF LAW: A COMMENT ON VERONICA RODRIGUEZ-BLANCO'S SOLUTION

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Resumen:

Este trabajo analiza la respuesta que Veronica Rodriguez-Blanco propone para resolver la paradoja de la normatividad del derecho: ¿Cómo es posible que una persona autónoma actúe siguiendo los mandatos de normas jurídicas sin comprometer su autonomía ni su voluntad? El autor ofrece dos críticas a la respuesta de Rodriguez-Blanco. La primera de ellas está basada en los comentarios que Rodriguez-Blanco ha hecho sobre la propuesta de David Enoch. En este punto, el autor argumenta en contra de la idea según la cual una perspectiva descriptiva del derecho puede, y debe, tratar de responder a los problemas generales de la normatividad del derecho. De acuerdo con el autor, una perspectiva que pretenda dar respuesta a los problemas de la normatividad del derecho no puede ser una perspectiva puramente descriptiva. En este sentido, el autor sostiene que la respuesta que ofrece Enoch es la única respuesta que una perspectiva descriptiva del derecho puede dar. La segunda crítica está dirigida a la respuesta que Rodriguez-Blanco da sobre la paradoja de la normatividad. En este segundo punto el autor argumenta que la perspectiva de Rodriguez-Blanco no es una perspectiva descriptiva como ella presume, sino que adopta una perspectiva normativa la cual, además, está comprometida con una idea perfeccionista del derecho.

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Palabras clave:

Normatividad del derecho, filosofía del derecho descriptiva, filosofía del derecho normativa, perfeccionismo.

Abstract:

This paper deals with Veronica Rodriguez-Blanco's answer to the paradox of the normativity of law: How can autonomous self-legislating persons act, without compromising their autonomy and their will, following legal rules? Regarding Rodriguez-Blanco's answer, I offer two main critiques. The first one is based on Rodriguez-Blanco's comments to David Enoch's paper in which I argue against the idea that a descriptive theoretical account of law can, and should, give an answer to general problems of normativity due to the fact that a theoretical approach that engages in questions about the normativity of law cannot be purely descriptive, therefore against Rodriguez-Blanco I conclude that Enoch's answer is the only response a descriptive account is able to offer. The second criticism focuses on Rodriguez-Blanco's response to the paradox and argues that her solution is not, in fact, a descriptive one, but one that relies on strong normative premises, which as it turns out defend a perfectionist perspective towards the law.

Keywords:

Normativity of Law, Descriptive Jurisprudence, Normative Jurisprudence, Perfectionism.

THE PARADOX OF THE NORMATIVITY OF LAW

SUMMARY: I. *The Normativity of Law through Descriptive Eyes: Rodriguez-Blanco's Critiques to David Enoch.* II. *Legal Norms* qua *Ethical Reasons: Rodriguez-Blanco's Perspective*.

The problem of legal normativity has been an old and persistent concern for Veronica Rodriguez-Blanco.[1] In general terms, according to Rodriguez-Blanco's view, the problem of normativity of the law is created by two antagonistic ideas: on the one side, the idea that individuals are autonomous self-legislating agents, who, in order to act freely and autonomously, need to act willingly and intentionally in the absence of any external impulse, and on the other hand, the idea that the law, through rules, policies and judicial decisions, can change the course of our lives, our preferences, or the course of our practical deliberations, by imposing on us an external force. Under these premises, she asks: How can we say that the law has a normative force upon us, when it is externally imposed on our will? How can autonomous self-legislating persons act following legal rules without compromising their autonomy and their will? (2011(b), p. 2; 2011(c), p. 6).

[1] See, for example, Rodriguez-Blanco, Veronica, "The Moral Puzzle of Legal Authority", in Bertea, Stefano and Pavlakos, George (eds.), *New Essays on the Normativity of Law,* Hart Publishing, Oxford, 2011(a); "Social and Justified Legal Normativity: Unlocking the Mystery of the Relationship", *Ratio Juris,* Vol. 25, 2012(a), pp. 409-433; "Legal Rules and Modesty Objective Goods: Towards an Epistemology of Objective Values in Law", manuscript paper, 2011(b), presented at the Seminar *Problema,* in the Legal Research Institute/UNAM, México, May 3, 2012; *Law Under the Guise of the Good,* (Unpublished book manuscript), 2011(c); "Reasons in Action v Triggering-Reasons: A Reply to Enoch on Reason-Giving and Legal Normativity", manuscript version, 2012(b) published in this number of *Problema*, No. 7, 2013, pp. 3-25. All references to Veronica's Rodriguez-Blanco work will be in parenthesis. The rest of the quotations will be in footnotes. Regarding Rodriguez-Blanco's paper "Reasons in Action *v* Triggering-Reasons…", the page numbers will refer to the manuscript version.

In other words, how can the law oblige us to do something without infringing our autonomy? How can we act according to the law and, at the same time, say that we act *intentionally*? The answer that Rodriguez-Blanco favors is that the law must provide reasons for action, so when we follow the law we are also acting *intentionally* and *willingly e.g.*, autonomously. Considering the problem this way, then, the law has to give us robust reasons to act. This means that if we tend to solve the paradox we must see that the reasons provided by the law are of a special nature: namely legal rules, which according to Rodriguez-Blanco, are grounded in what she calls 'good making characteristics' which have to be recognized and integrated in our practical deliberations if we are to be taken as rational agents (2011(b), p. 12; 2011(c), p. 170).

Rodriguez-Blanco's theoretical proposal relies in the following premises: the first one is, the idea "that law in general, and legal rules specifically *must show* themselves [...], in our practical reasoning. In this way, -she argues- we gain control and governance over our own actions in spite of this external force called law" (2011(b), p. 3). Second, she relies on the idea that by taking this path, agents will act and follow legal rules intentionally and not blindly. Third and last, she argues that for us to act intentionally according to legal rules, we have to "tap into" the *grounding reasons* of those rules: "The right exercise of our conceptual and practical capacities enable us to determine the grounding reasons as objective good-making characteristics of legal rules" (2011(c), pp. 184-185). In this sense, Veronica's answer to this problem is threefold and relies in the following theses:

1) The "Guise of the Good" thesis
2) The "Good Making Characteristics" of legal rules thesis, and
3) The "Identification of the grounding reasons formulas" thesis.

With these sets of ideas, Rodriguez-Blanco is not only trying to offer an explanation of law's normativity, but also, an answer to the paradox. This structure is part of what she calls a *complete* theory of reasons for action, which is a theory that tends to "provide a coherent explanation of the different features or principles that emerge from a common sense view, and [...] should also explain *reasons in actions*" (2012(b), p. 2). If this way of understanding her project of developing a complete theory of reasons for action is correct, then we can arrive at three different conclusions: (1) that legal theory (which is apparently taken to be purely descriptive, or what she calls following Aquinas, *partly practical* (2011(c), p. 10), can give a plausible explanation to the problems of the normativity of law, (2) that the law always provides reasons for action, and (3) that it is not enough to explain these reasons in an instrumental or triggering way.

In what follows, first I will develop some of the theoretical criticism that Rodriguez-Blanco has raised against David Enoch's paper "Reason-Giving and the Law".[2] In this section I will argue that a descriptive approach to the problem of the normativity of law cannot be stretched further than Enoch's proposal as Rodriguez-Blanco tends to believe and, contrary to what she argues, that her perspective is in fact a normative perspective. Second, based on her proposal I will advance some critical comments on her idea of a *complete* theory of reasons for action by showing how minor her descriptive approach really is and by advancing some of the theoretical consequences that I find in her way of understanding the role of legal norms in practical reason.

I. The Normativity of Law through Descriptive Eyes: Rodriguez-Blanco's Critiques to David Enoch

In her interesting paper "Reasons for Action *v* Triggering-Reasons: A Reply to Enoch on Reason-Giving and Legal

[2] Enoch, David, "Reason-Giving and the Law", in Green, Leslie and Leiter, Brian (eds.), *Oxford Studies in Philosophy of Law,* 2011.

Normativity" (2012[b]), Veronica Rodriguez-Blanco claims that Enoch's perspective about legal norms *qua* reasons for action fails because of three issues: the first one is that Enoch's *triggering reasons* are not reasons at all. The second is that a theory of law, in order to be successful, needs a sound and *complete* account of a theory of reasons for action which Enoch does not provide and, third, that Enoch's skepticism towards the idea that the law can (and should) provide robust reasons for action is exclusively directed to benefit his own favoured theory of law, *i.e.* legal positivism.

At the beginning of her paper, Rodriguez-Blanco rephrases some of Enoch words to underline three features of his proposal. She writes: Enoch has "denied that the normativity of law poses any substantial challenge to theories of law" (2012, p. 2), he "argues that the law provides reasons for actions in terms of what he calls 'triggering-reasons' and argues that robust reason-giving, *e.g.*, in the ethical domain and in law, are kinds of reason-giving as triggering reasons" (*ibíd.*) and, finally, that for Enoch "legal positivism is in the best position to explain the reason-giving character of the law in terms of what he considers the sound account of reason-giving, *i.e.*, triggering reasons" (*ibíd.*).

No doubt Enoch wrote some similar words in his "Reason-Giving and the Law". Still, I find it useful to make a more comprehensive reading of Enoch's claims by reading them in harmony with the rest of his ideas instead of taking them separately. For instance, Enoch's initial sentence to his paper is "A spectre is haunting legal positivists […] the spectre of the normativity of law" and then he continues, "How can something social and descriptive in this down-to-earth kind of way be normative?" (2011, p. 1). Just one page further he says:

> And my conclusion is going to be somewhat skeptical: Once we are clear on what reason giving in general consists in, and on what reason-giving powers the law actually has, there is not much by way of a problem here that needs to be

> solved, not a deep and interesting phenomenon here that theories of law need to accommodate, and that therefore places adequacy constraints on plausible theories of the nature of law. Furthermore, whatever problem does remain in the vicinity here, legal positivism, far from being refuted by it, is actually at a better position than alternative views to solve. Or so, at least, I shall argue (2011, p. 2).

With these few paragraphs in mind and a more comprehensive view towards Enoch's paper, I am convinced that Enoch is not saying that legal positivism is the best fitted theory to give an *answer* or to *explain* the problem of legal normativity. On the contrary, Enoch's skepticism is professed towards any answer that can be formulated from a theoretical (descriptive) perspective. He thinks that regarding the question about which kinds of reasons for action the law provide, a descriptive perspective is better fitted to *solve* the problem but not to *explain* it.

This difference is quite revealing. Enoch believes that as far as legal positivism is concerned it is not interested (and in fact it should not be interested) in providing an answer to the legal normative question, it has a way to solve the problem because, from a legal positivist point of view, this is not really a problem. "He sees no basis for assuming that law always (or "necessarily") gives reasons for action (other than "*legal* reasons for action")".[3] Saying this is not the same as saying that in comparison with other legal theories, legal positivism is in better shape to *explain* the imbricate problems of reasons for action. In this sense he is aware of the fact that legal norms provide legal reasons that can be taken and understood in many different ways by their receivers. For legal positivists it should be enough to say that legal norms pretend to give or try to remind the existence of reasons for action. But questions such as: "What kind of reasons does the law provides?" or, "Which are the

[3] Bix, Brian H., "The Nature of Law and Reasons for Action", in *Problema. Anuario de Filosofía y Teoría del Derecho,* No. 5, 2011, pp. 399-415, p. 414.

reasons people have to follow the law?" fall far beyond the positivist (descriptive) theoretical scope and interests. These are questions that must be answered by other kinds of philosophers interested in problems of normativity, generally speaking, or in the justification of actions, particularly, or interested in moral psychology.

If we grant that this is Enoch's perspective, then, there are reasons to believe that he is right and that he is not alone: legal positivism cannot give a full account of a normative problem.

At this point it is worth remembering the answers given to the problem of law's normativity by remarkable legal positivist such as Hart and Kelsen. Both cases are very clear on this issue. In the case of Kelsen, the validity of legal norms depends on the validity of a higher norm until the chain reaches the highest norm of all: the *grundnorm*. The *grundnorm* is the objective standard of validity of the law. It works as the ultimate foundation that provides validity to an entire positive legal system, but from this "foundational norm we can only derive the validity but not the content of the legal system".[4] It is only thought as a transcendental-logical condition which does not have any ethical-political purpose except the one of being the source of *legal validity*.[5]

In the case of Hart, with some minor variations the case is similar. The rule of recognition provides the criteria of validity of other legal rules but there is no rule in virtue of which the rule of recognition can be taken as valid. In this sense, "the rule of recognition is the *ultimate* rule of a system".[6] Certainly, for Hart the rule of recognition is not understood as a transcendental-logical condition but as a social practice. Still, the idea I am trying to express is that knowing which kind of reasons (if prudential, moral, ethi-

[4] Kelsen, Hans, *Teoría pura del derecho,* México, UNAM, 1982, p. 228.

[5] *Ibidem,* p. 229.

[6] Hart, H. L. A., *The Concept of Law,* 2nd. ed., Clarendon Law Series, 1997, p. 107.

cal, or technical) do legal rules provide, is something that legal positivism is not able to answer, and it should not be interested in answering. Hart on this same issue says that:

> There are, indeed, many questions which we can raise about this ultimate rule.
>
> […]
>
> We can ask whether it is a satisfactory form of legal system which has such a rule at its root. Does it produce more good than evil? Are there prudential reasons for supporting it? Is there a moral obligation to do so? These are plainly very important questions; but, equally plainly, when we ask them about the rule of recognition, we are not longer attempting to answer the same kind of questions about it as those which we answered about other rules with its aid,[7]

And further he continues stating:

> No such questions can arise as to the validity of the very rule of recognition which provides the criteria; it can neither be valid nor invalid but is simply accepted as appropriate for use in this way. To express this simple fact by saying darkly that its validity is 'assume but cannot be demonstrated', is like saying that we assume, but can never demonstrate, that the standard metre bar in Paris which is the ultimate test of correctness of all measurement in metres, is itself correct.[8]

For legal positivist, to say that a legal norm provides us with a reason to justify certain course of action is because such a norm has been created through a legally valid process, *e.g.*, that norm is valid from a legal perspective. For judges and other operators of the law this means that there is a legal reason to consider that a decision is justified when this one is based on a rule recognized within the system.

[7] *Idem.*

[8] *Ibidem,* p. 109.

Hart and Kelsen's conceptions of law considered that legal norms can only provide an ultimate criterion for their validity, the *Grundnorm* or the rule of recognition. In consequence, as Julie Dickson claims, "if, therefore, no further questions can arise as to the legal validity of the rule of recognition, then it is evident that, according to Hart's original account of it, there are no further legal reasons, and no further legal justification, for accepting it and treating it as binding".[9]

Considering these limits as being settled and accepted by legal positivists, then questions such as the ones raised by Plato´s *Euthyphro* are not seen as a problem under the positivist paradigm. Translated in modern terms, Socrates conversation with Euthyphro at the staircase of a Greek court house will be understood as the conversation of someone that is standing outside of the positivist thinking.

Socrates says:

> But if in fact what is dear to the gods and the holy were the same, my friend, then, if the holy were loved because it is holy, what is dear to the gods would be loved because it is dear to the gods; but if what is dear to the gods were dear to the gods because the gods love it, the holy would be holy because it is loved. But as it is, you see, the opposite is true, and the two are completely different. For the one (what is dear to the gods) is of the sort to be loved *because* it is loved; the other (the holy), because it is of the sort to be loved, *therefore* is loved. It would seem, Euthyphro, that when you asked what the holy is, you did not mean to make its nature and reality clear to me; you mentioned a mere affection of it—the holy has been so affected as to be loved by all the gods.[10]

The Socratic distinction could be translated in the following terms: *If what is legally binding is legally binding be-*

[9] Dickson, Julie, "Is the Rule of Recognition Really a Conventional Rule?", *Oxford Journal of Legal Studies,* Vol. 27, No. 3, (2007), p. 378.

[10] Plato, "Euthyphro", Indiana University, Fall 2010, p. 12.

cause the law recognizes it as legally binding or is it legally binding because its characteristics are 'good' (in a moral way) and because of those the legal system considered it to be legally binding.

The first answer is the positivist answer. Everything that is considered legally binding is so because the law (through the *ultimate* norm) recognizes it as legally binding. Suppose that a positivist is asked: "Do legal norms provide reasons for action?" Regarding this question the positivists might answer: "yes, it is possible". And now suppose that we ask a positivist: "What kind of reasons does the law provide?" at this point he/she might answer: "the reasons provided by the law can be of several sorts. This issue depends on the law receiver and not in the law giver". This is the answer, I think, is provided by Enoch's proposal of *Triggering reasons.* This is a limit that legal positivism, as a descriptive theory of law, has accepted for its approach. It cannot provide other kinds of answers since normative answers belong to a normative approach. As Brian Bix has claimed:

> At most, Enoch concludes, law *sometimes* gives reasons for action, as would be expected from normal triggering reasons –"the giving of the reason amounts to a manipulation of the non-normative circumstances in a way that triggers a preexisting conditional reason.[11]

This perspective clashes with the second answer given to Euthyprho's problem. This second answer is the one given by those who ask for additional reasons than the ones given by a purely descriptive perspective. Those who engage themselves with this second perspective consider certain norms as legally binding due to some other characteristics attached to legal norms aside from the ones that are regularly attached to them by the legal system, *e.g.*, their content, purposes, the legitimacy of their source (among others). This is the perspective I claim Rodriguez-Blanco has

[11] Bix, B., *loc. cit.*, note 3.

regarding the problem of the normativity of law, which is, different from Enoch's perspective.

The risks of this second answer are twofold: (1) If everything that is considered legally binding is so because it is also morally binding, then it appears that from a moral perspective (this is, from a practical perspective) the law becomes irrelevant. (2) If we consider the law as binding because it provides good reasons (Robust reasons in Enoch's terms or Moral reasons, in general terms) to behave according to it, it runs the risk of imposing moral values on autonomous agents; this is, it would not take seriously the idea of personal autonomy and, therefore, it would became a perfectionist normative system by imposing a ethical perspective through the rules of law.

I believe that both problems hunt Rodriguez-Blanco's perspective, defended in several papers.[12] In what follows I will refer to these problems.

II. Legal Norms *qua* Ethical Reasons: Rodriguez-Blanco's Perspective

Let us remember that Rodriguez-Blanco's response to the paradox created by the external force of the law and the idea of personal autonomy is articulated through three different theses: (1) The "Guise of the Good", (2) The "Good Making Characteristics" of legal rules, and (3) The "Identification of the grounding reasons formulas".

Traditionally it has been understood under the "guise of the good" model that "all intentional actions are conducted by reasons and under the belief that those reasons are good

[12] I am specifically referring to Rodriguez-Blanco, Veronica, "Legal Rules and Modesty Objective Goods: Towards an Epistemology of Objective Values in Law", paper presented at the Seminar *Problema. Área de Filosofía y Teoría del Derecho,* Instituto de Investigaciones Jurídicas de la UNAM, México, May 3, 2012, and *Law Under the Guise of the Good,* (Unpublished book manuscript), 2011.

reasons".[13] Rodriguez-Blanco's main idea by relating the "guise of the good" thesis to the normativity of law, is that agents should act intentionally (upon reasons and knowing the quality of those reasons) when they follow legal rules. For this to happen, agents need to know the reasons that sustain the rule in question in order to act accordingly. But also, they should know the quality of those reasons so that they can comply with the "belief" requirement that the thesis demands. This is, to act according to a true belief, that the reasons they are following are good reasons.

The point seems to be quite interesting. If individuals act according to legal dispositions for acting "intentionally" they need to know the reasons (and their quality of goodness) that ground such legal disposition. If they do not know them, under the paradigmatic case of intentional action, they are following those rules by mere reaction, imitation, or fear, in opposition to the "guise of the good" thesis. Under the premises of this thesis, it is not sufficient to infer the grounding reasons because such an inference can fall into false beliefs about the goodness of those reasons.

Definitely, one problem in the philosophy of practical reason and in moral philosophy has been the meaning of "good". What does the word "good" in the "guise of the good" thesis stand for: those reasons need to be good in an ethical way of 'good' (as in, for example, "I believe that recycling paper is good for the planet") or, can they be instrumentally 'good' (as in, "It is good for the team if I play injured, so we can lose time and we can win the game") or they are technically good (as in, "this car is really good because it doesn't use much gasoline").

In Aristotle's version, all intentional actions are based on *desires* that present their object in a favourable light.[14] It is important to consider that under Aristotle's notion the

[13] Velleman, David, "The Guise of the Good", *Noûs,* Vol. 26, No. 1, (1992), pp. 3-4; Setiya, Kieran, *Reasons without Rationalism,* Princeton University Press, 2007, pp. 59-60.

[14] Setiya, K., *ibidem,* pp. 74-75.

"guise of the good" is guided by his theory of a virtuous person. This is, for Aristotle we have a necessary relationship between virtue and practical reason. For Aristotle, a virtuous person is the one that knows how to reason in practical matters, and to reason in practical matters implies that sometimes there are reasons of prudence, of an instrumental nature or technical reasons that should be taken into consideration if, what we want, is to act as a virtuous person will.[15]

As far as I understand Rodriguez-Blanco's claims, Aristotle's thesis is too broad. Following Aristotle, she includes in her perspective some features or some characteristics of the "human good" (arguing for the existence of some features or some characteristics that can be cognized for the good development of our human nature), but later she includes the idea that individuals have a rational capacity to recognize, from several characteristics, which are 'truly' good and which are only apparent. Then she concludes that individuals have the rational capacity to recognize the "'truly' good" characteristics from the apparent and because they are rational agents they will follow them. In this sense, the "guise of the good" thesis will state that intentional action is based upon good ethical reasons. A person who acts intentionally (rationally) will have some objective considerations in mind about how human beings should flourish and develop themselves, how they should construct their lives, and so on. So, with this in mind, individuals are to be virtuous in a way: in having the correct disposition to recognize good reasons to act and to comply with them.

Intentional action to pursue values –she argues– should be understood in its paradigmatic sense (this is, when we act intentionally our actions have all the necessary properties of full agency. So this paradigmatic sense of action is

[15] Aristotle, *The Nicomachean Ethics,* The Online Library of Liberty, 2010, pp. 150 and ss. Granja Castro, Dulce María, "Aristóteles y las Virtudes", in Platts, Mark (comp.), *La ética a través de su historia,* México UNAM, 1988, p. 31.

contrary to involuntary action, to voluntary but un-intentional, a-rational or under the grip of emotions) and this paradigmatic sense of 'intentional action' is what produces objectively good laws, good acts, good communities, good schools, and so on.

Relating this way of understanding the "guise of the good" with the problem that Rodriguez-Blanco wants to deal with, we can say that she is advocating for a very strong and narrow conception of autonomy. Probably, closely related to the one defended by Raz.[16] This conception understands personal autonomy as the capacity some individuals have to choose valuable options of life. So "intentionality" in action is a characteristic of autonomous agency.

If I am correct in this reconstruction of Rodriguez-Blanco's claims, there are some questions I would like to raise:

a) Are all intentional actions really guided by good reasons? Is it not possible to talk about intentional actions produced by bad reasons, or by a false belief about the soundness of those reasons?

b) Acting under the grip of emotions really means to act non-intentionally or a-rationally? What would happen with all the moral emotions such as regret or shame or blame, or under the "guise of the good" do they play any role within our practical deliberation?

c) Is this an extremely narrow concept of autonomy that only includes the idea of choosing valuable things, instead, of widening the notion to the idea of well informed choices?

Independently of all these questions that I pose to Rodriguez-Blanco, the role of legal rules in our practical deliberation is still pending. How can legal rules provide reasons for action? How can an agent give a relevant place to legal

[16] Raz, Joseph, *The Morality of Freedom,* Clarendon Press, Oxford, 1986.

rules in their practical thought? It is at this point where the "good-making character thesis" enters.

According to Rodriguez-Blanco, legal rules should be transparent. This means that the grounding reasons that they hold should be intelligible to individuals. In this sense, she argues, the agents will stop obeying and complying with legal statutes and prescriptions only for fear of sanction, and will start obeying them because they accept the reasons that ground such rules. Rodriguez-Blanco says that: Individuals have the correct "practical and conceptual capacities for acting according to what is of value and not merely according to what *appears* to be good" (2012, p. 10). Clearly, her perspective is backed up by a cognitive stance towards ethical values. According to Rodriguez-Blanco, it is not sufficient for an agent to act upon reasons that he/she beliefs to be valuable but according to those that are *objectively* valuable. As far as I understand the "good-making characteristics" of legal rules, the idea is that legal norms should provide the agents with such an objective material of goodness. This idea, of course, goes hand in hand with the "guise of the good" thesis abovementioned.

At this point Rodriguez-Blanco warns us that "the "guise of the good" model does not aim to show that there are absolute or universal objective goods" (2011[b], p. 14). She says that this model can only show that there are goods 'from the point of view of creatures like us'. She warns us by saying that the epistemology of value defended by it is not *ambitiously* objective but, rather, *modestly* objective (*ídem*). And the term 'good' is modestly objective because she grounds it in the social and historical concepts that have developed within a society.

But if we take into consideration some of the conceptual distinctions that contemporary liberalism has developed, such as: the difference between 'ethics' and 'morals' or the 'good' and the 'right', between 'thick' and 'thin' moral concepts, and the like, we will realize that the idea of "good" that she tries to imbue into the legal system or into the idea

of 'legal norm', is a 'strong', 'thick', non-modest objective notion of the 'good', this in the sense that any legal system that tries to impose or to promote a distinctive conception of the good is a legal system constructed through the prism of ethics and not through the prism of morality, or justice. Under my perspective this idea is guided by a very strong version of moral perfectionism that needs further development and justification.

All this brings me to a different concern: What would happen if someone does not accept the grounding reasons that show the good characteristics of the law, and acts not against it but without taking them into consideration? According to the "guise of the good" model, Can we still consider his act as an intentional act? Can we still consider him an autonomous agent?

Let us remember that this construction tends to dissolve the antagonism between autonomy and the external power of the law. The idea is that if the law presents itself as one of good making characteristics and if all autonomous agents act intentionally (this is, under good reasons) legal rules will provide reason to act according to it beyond the fear of coercion. This is, citizens will normally accept the grounding reasons as good making characteristics of legal rules, and will accept the goodness of legal authority.

I have the suspicion, as said before, that a theory of legal normativity that claims a relevant role for legal rules within our ethical deliberations is a theory that tends to put at the forefront the practical irrelevancy of the law. And if the law is considered as binding because it provides 'good' reasons, then, it runs the risk of imposing moral values on autonomous agents; this is, it does not take seriously the idea of autonomous persons and, therefore, it becomes a perfectionist normative system.